IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

OP.No. 10407 of 2002(L)

PETITIONER:

BABU VARGHESE, PROPRIETOR,
BABU GAS SERVICE, PERUMBAVOOR.

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS:
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1. THE INDIAN OIL CORPORATION LTD.,
REPRESENTED BY THE DIRECTOR (MARKETING)
INDIAN OIL CORPORATION LTD., HEAD OFFICE,9-A11,
YAWAR JUNG MARG, BANDRA, MUMBAI.

2. MINISTRY OF PETROLEUM & NATURAL GASES,
REP.BY ITS SECRETARY TO GOVERNMENT,
SHASTRI BHAVAN, NEW DELHI.

3. UNION OF INDIA, REP.BY THE SECRETARY TO
GOVERNMENT, DEPARTMENT OF PETROLEUM AND NATURAL
GAS, SHASTRI BHAVAN, NEW DELHI.

ADDITIONAL RESPONDENTS IMPLEADED:

ADDL.4. P.K,.GANGADHARAN, S/O.KOCHAN, 48 YEARS, PROPRIETOR,
SRI KRISHNA BHARAT GAS AGENCY, XII/602,ISC BUILDING,
SRIYAD POST, TRICHUR DISTRICT.

" 5. MRS.K.K,.TULASI BAI, PROPRIETOR, SRI PADMANABHA BHARAT GAS AGENCY,
INDRANEELAM APARTMENT, MARG MATHA AVENUE, KARIMANGALAM POST,
TRICHUR DISTRICT.

" 6. MS.K.BINDU, W/O.P.SASI, M/S.GOVIND BHARAT GAS AGENCY, 7/973,
NEAR KULANGARA FRAME WORKS, KHANRA NAGAR POST,
KORATTY, TRICHUR DISTRICT.

" 7. E.C.PREMLAL, M/S.GURUDEV BHARAT GAS AGENCY, NEDUNGATH BUILDING,
CHEVOOR P.O., TRICHUR.

ADDL.RESPONDENTS 4 TO 7 ARE IMPLEADED AS PER ORDER DATED 4.6.2002
IN C.M.P.NO.24234/2002.

BY ADV. SRI.M.K.SUMOD, ADDL.CGSC
ADV. SRI.SHEJI P.ABRAHAM.
SRI. AJITH KRISHNAN, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/08/2007, ALONGWITH O.P.NO.13303 OF 2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (O.P.NO.10407 OF 2002)

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE COMMUNICATION.
EXT.P2	TRUE COPY OF THE COMMUNICATION.
EXT.P3	TRUE COPY OF THE COMMUNICATION.
EXT.P4	TRUE COPY OF THE LETTER INFORMING THE EXTENSION OF AREA.
EXT.P5	TRUE COPY OF THE CIRCULAR NO.P.20012/65/2000 MKT DATED 10.10.2001.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

ahz/

H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.P. NOS. 10407 & 13303 OF 2002

Dated this the 16th August, 2007

JUDGMENT

SANKARAN,J.

The prayers in O.P.No.10407 of 2002 are the following:

"i) to issue a writ of certiorari or any other direction or order quashing Ext.P5 as arbitrary and illegal;

ii) issue a writ of mandamus directing the respondents not to transfer any of the existing customers of the petitioner to any newly appointed distributor;

iii) to issue a writ of mandamus or direction or order, directing the respondents to allow the petitioner to enroll customers and sell refills upto his ceiling limit specified by the respondents;

iv) to issue a declaration that the petitioner is entitled to sent enroll customers and sell refills upto the ceiling limit fixed for him by the respondents;

v) to issue an interim order staying operation and implementation of Ext.P5 as far as the petitioner is concerned pending final disposal of the Original Petition;

vi) to issue any other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

Exhibit P5 is the direction given by the Government of India vide letter dated 10th October, 2001 for the transfer of L.P.G connections from one distributor to another on the basis of viability norms.

2. The prayers in O.P.No.13303 of 2002 are the following:

"i) issue a writ of mandamus or such other appropriate writ, order or direction commanding respondents 3 and 5 to 7 to take necessary steps to effect transfer

customers from the rolls of the existing distributors to the newly commissioned distributorships of the petitioners and also to ensure that the old distributors do not operate in the areas for which petitioners have been given the right of distributorship in LPG;

ii) issue a writ of mandamus or such other appropriate writ, order or direction commanding respondent No.1 to take adequate steps to enforce and implement Exhibit P3 and on failure of the Oil Corporations to carry out the instructions contained therein, take necessary punitive action against them; and

iii) grant such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. A similar question was considered by a Division Bench of this Court in O.P.No.15397 of 2003 and connected cases, which were disposed of by judgment dated 28th May, 2003, wherein it was held thus:

> "11. Admittedly, an agreement had been executed at the time of appointment of the petitioners as distributors. A perusal of the terms of the agreement shows that the Corporation had specifically reserved the right to "appoint one or more additional distributors in the same territory. ...." This could be done "without any reference to or consent of the distributor". Still further it was also provided that the distributor shall be liable to "confine himself to effect the sales in the area or territory specified hereinabove but the Corporation shall be entitled without the consent of the Distributor to enlarge, reduce, increase or modify such area or territory to such other place as may from time to time be authorised by the Corporation in writing." Thus, it is clear that under the agreement the Corporation was entitled to appoint additional distributors for the area which had been allotted initially to any dealer including the present petitioners. Still further, the Corporation was also entitled to unilaterally reduce the area which may have been initially allotted to a dealer. Another fact which deserves mention is that in clause 11 of the agreement the distributors had specifically undertaken to "faithfully and diligently observe and carry out all directions, orders, terms and conditions as may be issued from time to time. ..." In clause 23 also a similar

provision had been made.

> 12. In view of the terms of the agreement it is manifest that the distributors like the petitioners did not have an indefeasible right to effect sales within the area allotted to them. The area of their operation could be unilaterally reduced. New distributors could be appointed for the same area. This is precisely what has happened in the present set of cases."

Respectfully following the Division Bench decision in O.P.No.15397 of 2003, O.P.No.10407 of 2002 is dismissed and O.P.No.13303 of 2002 is allowed. The directions issued in O.P.No.15397 of 2003 shall follow in O.P.No.13303 of 2002 as well.

Consequent to the order in the Original Petitions, pending interlocutory applications are also rejected.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU,C.J. &
K.T.SANKARAN, J.

O.P.NO.10407 OF 2002 &
O.P.NO.13303 OF 2002

JUDGMENT

16th August, 2007